

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 JASON PAUL CHESTER,

9 Plaintiff,

10 v.

11 UNIVERSITY OF WASHINGTON et al.,

12 Defendants.  
13

CASE NO. C11-5937 BHS

ORDER DENYING PLAINTIFF'S  
MOTION FOR CONTEMPT AND  
SANCTIONS AND DENYING  
DEFENDANTS' MOTION FOR  
SANCTIONS

14 This matter comes before the Court on Jason Paul Chester's ("Chester") motion  
15 for contempt and sanctions (Dkt. 31). For the reasons stated herein, the Court has  
16 considered the pleadings filed in support of and in opposition to the motion and the  
17 remainder of the file and hereby denies the motion.

18 **I. PROCEDURAL HISTORY**

19 On May 17, 2012, the University of Washington and individually named  
20 Defendants filed a motion to dismiss Chester's 42 U.S.C. § 1983 claims and all claims  
21 against individual Defendants. Dkt. 21. On May 26, 2012, Chester filed a response in  
22 opposition to Defendants' motion. Dkt. 23. In his motion, he made a request for attorney

1 fees. *Id.* On June 8, 2012, the Defendants filed a reply. Dkt. 27. On June 19, 2012,  
2 Chester filed an amended complaint entitled First “Amended” Complaint (Dkt. 42),  
3 alleging breach of contract and causes of action under the ADA, RA, Washington Law  
4 Against Discrimination, and 42 U.S.C. § 1983 claims based on alleged violations of the  
5 Sixth Amendment.

6 After the Defendants filed their motion to dismiss, Chester filed numerous  
7 documents with Court, unrelated to the merits of this underlying civil action. *See, e.g.*,  
8 Dkts. 34, 35, 37, 40, 41, and 50.

9 On June 8, 2012, Chester filed the instant motion for sanctions against attorney  
10 Jayne L. Freeman (“Freeman”), counsel for Defendants. Dkt. 28. On June 10, 2012,  
11 Chester filed another motion, this time for contempt and sanctions against Defendants for  
12 allegedly violating the minute order and illegally withholding evidence. Dkt. 31 at 1. On  
13 June 25, 2012, Defendants filed a response to both of Chester’s motions. Dkt. 45. On  
14 June 25, 2012, Chester filed a reply to Defendants’ response, responding in large part to  
15 Defendants’ arguments against Chester’s motion for contempt and sanctions (Dkt. 31).  
16 Dkt. 47.

17 On August 21, 2012, the Court denied Chester’s motion for attorney fees and  
18 granted in part and denied in part Defendants’ motion to dismiss. Dkt. 52. On August  
19 21, 2012, the Court denied Chester’s motion for sanctions based on Defendants’ motion  
20 to dismiss. Dkt. 53.

## II. FACTUAL BACKGROUND

On April 26, 2012, in response to Chester's requests for production, Defendants sent a disk with electronic documents in conjunction with their initial disclosures via regular and certified mail. Dkt. 46 at 5 and 21-22 (Declaration of Freeman). On April 26, 2012, Deanne Nylund ("Nylund"), legal assistant to attorney Jayne Freeman, emailed Chester to let him know the aforementioned were mailed and would arrive by certified mail. *Id.* at 15. The same day Chester emailed Nylund indicating that he had sent his initial disclosures. *Id.* at 16.

On May 26, 2012, although most of the responses to Chester's requests for production were on the disk, Defendants supplemented their responses to Chester's requests for production and indicated there would be some additional supplements. Dkt. 46 at 2. Until June 10, 2012 (a Sunday), when Chester filed the instant motion for contempt and sanctions, Ms. Freeman was "not aware that Mr. Chester claimed he had not received the computer disk with the documents on it. Since the U.S. Mail had not been returned, [she] assumed he had received the disk." *Id.*

After the weekend, Ms. Freeman's staff informed her that the responses with the disk sent to Chester by certified mail had been returned. *Id.* Chester never emailed or otherwise communicated with Ms. Freeman to indicate that he had not received the documents, although her office had previously communicated with him by email. *Id.* On June 13, 2012, Freeman contacted Chester by email asking him to verify they were mailing him information at the correct address. *Id.* Freeman also "offered to resend the ... documents via an internet document sharing service, 'YouU-Send-It.'" *Id.*

1 According to Freeman, Chester merely responded with accusations that she was  
2 unethical. *Id.* However, on June 14, 2012, Freeman's office resent the electronically  
3 stored documents to Chester via U.S. Mail (another disk) and via the internet-based  
4 program. *Id.* On June 19, 2012, Chester verified that he received the disk. *Id.*

### 5 **III. DISCUSSION**

6 Chester's motion for contempt and sanctions centers on allegations that  
7 Defendants violated the Court's minute order. Dkt. 31 at 2. Specifically, Chester claims  
8 he failed to receive initial discovery, specifically the disk with what Chester contends has  
9 relevant, critical, electronically stored information. Dkt. 31 at 2. Ultimately, Chester  
10 claims that Defendants' and Defendants' attorney's alleged failure to produce this  
11 information demonstrates that they did not make a good faith effort to comply with the  
12 minute order for initial discovery and warrants contempt against both Defendants and  
13 their attorney. *Id.*

14 Defendants ask the Court to deny Chester's motion. Dkt. 45 at 1. They also  
15 request the Court award Defendants reasonable attorney fees incurred for having to  
16 respond to the motion. *Id.* Alternatively, Defendants request at least an admonition to  
17 Chester to deter him from "a continued barrage of meritless motions and court filings  
18 unrelated to underlying claims." Dkt. 45 at 6.

#### 19 **A. Legal Standards**

20 Fed. R. Civ. P. ("Rule") 37(a)(1) requires that a party seeking discovery  
21 certify that he or she has made a good faith effort to confer or attempt "to confer with a  
22 party failing to make a disclosure in an effort to obtain it without court action."

1 Additionally, Rule 37(a)(3) indicates that “if a party fails to make a disclosure required  
2 by Rule 26(a), any other party may move to compel disclosure and for appropriate  
3 sanctions.” Pursuant to Rule 37(b)(2), the Court may grant sanctions where a party fails  
4 to obey a court order to provide or permit discovery.

5 **B. Analysis**

6 In this case, Chester submits no persuasive evidence that he followed Rule  
7 37(a)(1) by certifying that he made a good faith effort to confer or attempt to confer with  
8 the Defendants regarding their alleged failure to produce the disk before Chester filed his  
9 motion for contempt and sanctions. In fact, evidence exists to the contrary.

10 The minute order requires parties to make initial disclosures by April 26, 2012. In  
11 this case, Defendants made good faith attempts to produce the initial disclosures in a  
12 timely manner and provide Chester notice of the need to supplement. Chester never  
13 contacted Defendants’ attorney to let her know that he was not in receipt of the  
14 disclosures, failing to meet the standard in Rule 37(a)(1) requiring him to confer in good  
15 faith. Instead, he simply filed his motion for contempt and sanctions. Furthermore, once  
16 Freeman became aware that Chester had not received the documents requested, she sent  
17 them by two means, and Chester received them.

18 The Court does not find that the Defendants’ and their attorney’s conduct were an  
19 attempt to deprive Chester of justice, as he claims, nor to flout the authority of this  
20 Court’s minute order. The Court also reminds Chester that before he files a motion, he  
21 should ensure he has complied the Civil Rules, i.e. Rule 37(a)(1)’s requirement to confer  
22 in good faith with the other party and, at the time of filing pursuant to Rule 37, certify

1 compliance with it. Additionally, the Court cautions Chester to avoid filing motions,  
2 objections and notices or requests with the Court which are clearly without merit or have  
3 no bearing on the underlying facts and issues of this case.

4 **IV. ORDER**

5 Therefore, it is hereby **ORDERED** that Chester's motion for contempt and  
6 sanctions is **DENIED** (Dkt. 31). Defendant's motion for attorney fees is **DENIED** (Dkt.  
7 45).

8 Dated this 22nd day of August, 2012.

9  
10 

11 **BENJAMIN H. SETTLE**  
12 United States District Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22